

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICKI McCOLLISTER, R.N.,

Registered Nurse License No. 521992

Respondent.

Case No. 2006-273

OAH No. L2006090426

DECISION AFTER NON-ADOPTION

Gary Brozio, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California on July 23, 2007. T. Michelle Laird, Deputy Attorney General, represented complainant Ruth Ann Terry, M.P.H., R.N., Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs. Joseph Tilden Rhea, Attorney at Law, represented respondent Micki McCollister. The matter was submitted July 23, 2007.

On August 2, 2007, Judge Brozio issued his Proposed Decision. On October 4, 2007, the Board issued its Notice of Non-adoption of the Proposed Decision. On November 14, 2007, the Board issued its Order Fixing Date for Submission of Written Argument. After review of the entire administrative record including the transcript and written argument from both parties' attorneys, the Board hereby renders its decision in this matter.

FACTUAL FINDINGS

*Background*

1. On May 15, 1996, the Board of Registered Nursing (Board) issued Micki McCollister (respondent) Registered Nursing License Number 521992. The license is active and will expire on May 31, 2008, unless renewed.

2. On June 20, 2006, complainant signed an Accusation seeking discipline on respondent's license because she had been convicted of a substantially related crime and had engaged in unprofessional conduct. The Accusation also requested costs of investigation and enforcement.

Respondent filed a Notice of Defense, and this hearing followed.

### *Stipulation*

3. On July 18, 2007, respondent signed a Stipulation in which she admitted all the factual allegations and violations of the Nursing Practice Act set forth in the Accusation. Following is a summary of respondent's admissions.

Case Number INM150865: On March 9, 2005, in the Riverside County Superior Court, respondent pled guilty to a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more). The court placed her on summary probation for three years on the condition, among others, that she serve one day in custody (credit for time served), that her driver's license be restricted for three months, that she pay fines of approximately \$1,500, and that she complete the First Offender DUI program.

Respondent was arrested for this offense on September 11, 2004. She admitted drinking wine and taking Ativan (Lorazepam) and Hyzaar (Losartan and Hydrochlorothiazide).<sup>1</sup> She admitted that she was "out of it," and that she should not have been driving. Her blood alcohol level was 0.09 percent.<sup>2</sup>

Respondent admitted that this conviction was substantially related to the qualifications, functions, and duties of a registered nurse. She admitted that the conviction supplied cause for discipline under Business and Professions Code sections 490 and 2761, subdivision (f). She also admitted that the conviction constituted unprofessional conduct and supplied cause for discipline under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivisions (b) and (c).

Case Number IMN145459: On March 9, 2005, in the Riverside County Superior Court, respondent was charged with driving under the influence of alcohol and drugs, but she pled guilty to a reduced sentence commonly referred to as "two one pointers," which is a plea to two infractions. (Veh. Code, §§ 22350 (speeding) and 21658, subd. (a) (straddling a lane).)

Respondent was arrested for this offense on March 9, 2004. She was driving and reached down to pick up her telephone when she hit a parked vehicle. Her vehicle overturned and she was injured. She was arrested for driving under the influence, and she told the officer that she drank wine and took a sedative known as Ambien (Zolpidem).<sup>3</sup>

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<sup>1</sup> Lorazepam is a benzodiazepine and schedule IV substance under Health and Safety Code section 11057, subdivision (d)(16). Losartan and Hydrochlorothiazide are used to reduce hypertension. All three drugs are dangerous drugs under Business and Professions Code section 4022, subdivision (c).

<sup>2</sup> This fact was not alleged in the Accusation but the parties stipulated to it at the hearing.

<sup>3</sup> Zolpidem is a sedative and hypnotic and a schedule IV substance under Health and Safety Code section 11057, subdivision (d)(32). It is a dangerous drug under Business and Professions Code section 4022, subdivision (c).

Respondent's blood alcohol level was 0.04 percent. Her toxicology screen was negative for amphetamine, cocaine, heroin, and phencyclidine.

Respondent admitted that the facts and circumstances of this crime constituted unprofessional conduct and supplied grounds for discipline under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (b).

#### *Respondent's Mitigation and Rehabilitation Evidence*

4. The Stipulation permitted respondent to present mitigation and rehabilitation evidence.<sup>4</sup> Following is a summary of the evidence presented at the hearing.

5. Respondent is 56 years old. She recently married. She has two grown children from a former marriage. She has degrees in Public Health (1990) and Nursing (1995). She began study to obtain a Master's Degree in Nursing that she did not complete.

6. Around the time of her second arrest in September 2004, respondent was working at Eisenhower Medical Center (Eisenhower) where she performed cardiac clinical trials and worked in a 31-bed telemetry unit where remote monitoring of cardiac patients with various comorbid conditions was provided. It was a step down from an intensive care unit (step-down unit). She received good evaluations.

7. Respondent testified that she is an alcoholic, but her drinking problem did not surface until the year 2000 when she was 50 years old. At that time, she encountered multiple, serious stressors and she began drinking to excess. The stressors included a brief second marriage that involved domestic violence; separation from her children, friends, and family while she worked and simultaneously attended graduate school; paying for her children's college education; and the death of her parents. She was also the victim of rape. She explained that she was repressing the anguish of the rape, and she was simultaneously "pushing [herself] mercilessly" while trying to relocate, deal with her parents, and meet financial obligations. Respondent explained that she used alcohol to cope with anxiety and stress. She lacked coping strategies and an adequate support system.

8. In June 2005, respondent took a medical leave from Eisenhower to address her alcohol problems. She entered Loma Linda University Behavioral Health Medicine Center on July 5, 2005. She was discharged on July 12, 2005. Thereafter, she entered an outpatient program for four months and lived at the Women of Courage Sober Living House. She was in a highly supportive women's group. She was discharged from the outpatient program on November 16, 2005. In the outpatient program, she attended AA meetings, had a sponsor, and submitted to drug testing. Her tests were all negative. She completed the First Offender Program. She has a great deal of personal knowledge about addictive diseases, and knows she must remain free from alcohol and any other addictive substances. She has since stopped going to AA meetings on a regular basis. She has not ingested alcohol since her last arrest,

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<sup>4</sup> Respondent also filed a *Statement in Mitigation*.

and she insisted that she will never drink again. Her husband confirmed that she had not ingested alcohol since her recovery program.

9. When she left the rehabilitation facility, respondent could have gone back to work at Eisenhower, but she elected to take a new position at Desert Regional Medical Center (Desert Regional). She was assigned to another cardiac step-down unit where she worked as a staff nurse for four months. Thereafter, Desert Regional promoted respondent to clinical manager of the nurses and Certified Nursing Assistants (CNA) for one floor of the cardiac step-down unit. Desert Regional hired and promoted respondent with full knowledge of her arrests and her pending disciplinary action.

10. In January 2007, Desert Regional reorganized and asked respondent to become the manager of two cardiac floors at night (62 patients, 14 nurses, and 4 CNAs). Respondent did not like working the night shift, but she accepted the position with the understanding that she could change jobs if necessary. After three months, respondent decided that she could not work the night shift. She switched back to days and became a charge nurse.

11. Respondent has received good evaluations at Desert Regional, and she obtained a letter from her supervisor, Beverly Jackson, RN, NSN, CCRN, asking for leniency. The letter confirmed that respondent does an “exemplary job,” and opined that respondent’s “present mental, personal, and professional situation removes her from any and all suspicion of being unsafe or incompetent in the rendering or supervision of patient care.” Six other colleagues wrote letters vouching for her professionalism.

12. Respondent will be eligible to become a clinical manager of the step-down unit on the day shift when that position opens, which may happen soon. But she is more interested in a position as a clinical educator, which also may open soon. That position requires a CCRN/PCCN course and examination.<sup>5</sup> Respondent has completed the course work and is eligible to take the examination, but she cannot take the examination if her license is on probation. The position as clinical educator greatly interests respondent, and it would result in a pay increase. For this reason, she asked that her license not be placed on probation.

13. Respondent explained that her life is more stable now. She is in a supportive relationship. Her husband supports her abstinence from alcohol, and they do not keep alcohol in the house. She had insight into the stressors that caused her to begin drinking to excess. She had successfully eliminated those stressors from her life. She had learned coping mechanisms. She faced the “demons” that haunted her in the past, including the rape. She was a more peaceful and accepting person. She was embarrassed and ashamed of her convictions and never wanted alcohol in her life again. She was not in counseling because she felt that it was not presently necessary, but she would attend counseling, or increase her attendance at AA meetings, if necessary. This evidence made relapse unlikely, but not impossible.

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<sup>5</sup> Respondent also attended four additional continuing education courses.

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. Regarding the allegations seeking discipline, complainant had the burden to prove them by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Reality Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) This standard is defined as “highly probable.” (CACI § 201.)

2. Regarding the costs of investigation, complainant had the burden to prove them by a preponderance of evidence. (Evid. Code, § 115.) This standard is defined as “more likely to be true than not true.” (CACI § 200.)

### *Cause for Discipline*

3. The Board has authority to discipline a nurse’s license for the conviction of a substantially related crime under Business and Professions Code sections 490, 2750, and 2761, subdivision (f).

4. Title 16 of the California Code of Regulations (CCR), section 1444, sets forth the criteria of substantial relationship. It states in relevant part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.”

The Board’s “Recommended Guidelines for Disciplinary Orders and Conditions of Probation” (Guidelines) state that “sale or use of controlled substances” constitute substantially related crimes.

5. The Board has authority to discipline a license for unprofessional conduct under Business and Professions Code sections 2750 and 2761, subdivision (a). Section 2762, subdivision (b) and (c) state that it is unprofessional conduct to:

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining

to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.”

6. Cause exists to impose discipline on respondent’s license based on her stipulation to the violations of the Nursing Practice Act. These conclusions are based on Factual Finding 3 and Legal Conclusions 1 and 3-6.

#### *Degree of Discipline*

7. In reaching a decision in a disciplinary action, 16 CCR section 1444.5 requires the Board to consider the Guidelines. The Guidelines state that a criminal conviction for a substantially related crime constitutes unprofessional conduct. Revocation is the recommended discipline for violations of section 2761, subdivisions (a) and (f). The recommended discipline for violations of subdivision (b) of section 2762 is revocation. Revocation is also recommended for violations of subdivision (c) of section 2762, when the licensee is convicted of a criminal offense and was under the influence of drugs or alcohol. Under both these subdivisions, however, a first-time offender with documented evidence of an on-going rehabilitation program may receive minimum discipline of revocation stayed with three years probation and conditions of probation 1-19.

8. The introduction to the Guidelines states that an Administrative Law Judge may deviate from recommended guidelines for sufficient cause. Therefore, regulations and Guidelines set forth principles for determining the degree of discipline and for evaluating evidence regarding mitigation and rehabilitation.

9. The Guidelines set forth the following factors to be considered when determining whether revocation, suspension, or probation is the appropriate level of discipline:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.”

10. The Guidelines set for the following principles for considering mitigation evidence:

“The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent’s current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: “I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.” It should be signed by the one making the statement and dated.

B) Recent, dated letters from counselors regarding respondent’s participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor’s diagnosis of respondent’s condition and current state of rehabilitation (or improvement), the counselor’s basis for determining improvement, and the credentials of the counselor.

C) Recent, dated letters describing respondent’s participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.

D) Recent, dated laboratory analyses or drug screen reports, where appropriate.

E) Recent, dated performance evaluation(s) from respondent’s employer.

F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.

G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used.”

11. The criteria for rehabilitation set forth in 16 CCR 1445, subdivision (b) provides:

“When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the

rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.”

12. The Board’s representative argued that this case warranted the minimum recommended penalty for first-time offenders with documented evidence of an on-going rehabilitation, namely revocation stayed with three years probation and conditions of probation numbers 1-19. The Board’s representative stated that, “the Board wants a little more oversight time.” Respondent argued that dismissal or a public reprimand was sufficient, but if probation had to be imposed, many of the standard conditions should be deleted because they were unfair or duplicative of respondent’s voluntary rehabilitation efforts. Respondent’s evidence was not sufficient to order a public reprimand, nor was it substantial enough to warrant a reduction in the term of probation and to eliminate the requirement that Respondent participate in a substance abuse rehabilitation program and take a nursing course. Once Respondent’s license is placed on probation, the Board staff will evaluate the rehabilitation program that Respondent’s has already completed to determine if public safety warrants her having to enter and successfully complete another program.

13. Respondent admitted all violations in the Accusation. Revocation is the *only* recommended penalty for violations of section 2761, subdivisions (a) and (f). But the conduct in this case fits more logically under section 2762, subdivisions (b) and (c), where the guidelines permit a wide range of discipline. Respondent did not commit any of the serious crimes the Guidelines describe as substantially related (i.e. murder, rape, child abuse, lewd conduct, theft, or assault and battery). Nor did respondent engage in the “sale or use of controlled substances” because she had prescriptions for the drugs she ingested, and she was taking the recommended dose. Moreover, the crimes did not involve moral turpitude. Thus, outright revocation under section 2761 is not the appropriate discipline.



14. Regarding the appropriate level of discipline under section 2762, it should be noted that respondent did not engage in the conduct at work or while she was caring for patients. There is no evidence that she engaged in inappropriate conduct at work. Thus, generally speaking, the Guidelines support imposition of the minimum recommended penalty for first-time offenders, namely revocation stayed with three years probation and conditions of probation numbers 1-17.

15. The Guidelines contemplate careful consideration of the “totality of facts and circumstances in each individual case” and permit deviation from the recommendations for sufficient reason. And any downward departure, however, must address the Board’s paramount concern for public safety. Respondent was first arrested on September 11, 2004, after drinking wine and taking Ativan and Hyzaar while driving a motor vehicle. She was again arrested on March 9, 2004, approximately six months later and told the arresting officer that she drank wine and took a sedative, Ambien. In spite of these two incidents, respondent waited until she was actually convicted on March 5, 2005 to seek any help with her chemical dependency problems. This indicates that respondent did not take her problem seriously until she was convicted. This lack of awareness is of concern for the Board because in order to protect the public the Board needs to be assured that respondent will seek help as soon as she realizes she has a problem as opposed to waiting for it to lead to a criminal conviction before she seeks help. In mitigation, respondent is highly competent at her work and is qualified to care for patients, and supervises other nurses, with minimal supervision. Due to the lack of evidence that respondent suffers from any type of mental disorder, public protection does not require the imposition of probation conditions 18 (Mental Health Examination), and 19 (Counseling). In addition, respondent established cause to slightly modify conditions 6 and 8 to permit her to take a vacation and supervise other nurses.<sup>6</sup>

16. There are no grounds for further departure from the Guidelines’ recommendations. Despite her rehabilitation, respondent has only been sober for three years. She remains on criminal probation for another year. Although relapse may be unlikely, the possibility exists. Public safety demands a three-year period of probation. These conclusions are based on all Factual Findings and Legal Conclusions 1 and 3-16.

#### *Reasonable Costs of Investigation*

17. The Accusation seeks costs under Business and Professions Code section 125.3. That section provides in pertinent part:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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<sup>6</sup> All changes to the Standard Probation Conditions, contained in the Order, are in bold.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a)."

18. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4<sup>th</sup> 32, the California Supreme Court held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 did not violate due process. However, the court held that it was incumbent on the Board to exercise its discretion to reduce or eliminate cost awards in a manner that ensured section 317.5 did not "deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing." The Court set forth four factors that the Board was required to consider when deciding whether to reduce or eliminate costs. These were: (1) Whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a "subjective" good faith belief in the merits of his position; (3) whether the chiropractor raised a "colorable challenge" to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

Since regulation 317.5 and section 125.3 have substantially the same language and seek the same sort of cost recovery, it is reasonable to extend the reasoning in *Zuckerman* to section 125.3.

19. The Stipulation did not address the issue of costs. Respondent's representative submitted a Certification of Prosecution of Costs in the amount of \$8,609.50. These costs were reasonable in light of the Board's representative's highly competent prosecution of the case. On the other hand, respondent's rehabilitation evidence resulted in a reduction in the minimum recommended discipline. It is reasonable to reduce the cost award to \$5,000. This conclusion is based on Legal Conclusions 2 and 16-18.

## ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 521992, issued to Respondent Micki McCollister, is revoked. However, the revocation is stayed and respondent is placed on probation for three (3) years on the following conditions.

**SEVERABILITY CLAUSE** – Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

**CRIMINAL COURT ORDERS:** If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

(5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. **Respondent shall be permitted to take up to three (3) weeks of vacation per year.**

*For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.*

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) **EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS** - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) **SUPERVISION** - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care. **Respondent shall be permitted to supervise other nurses and personnel.**

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) **Maximum** - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) **Moderate** - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) **Minimum** - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) **Home Health Care** - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) **EMPLOYMENT LIMITATIONS** - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) – Respondent, at her own expense, shall enroll and successfully complete at least twenty (20) contact hours of nursing education, at the community college level or higher, in a subject matter relevant to the practice of registered nursing as directed and approved by the Board. The course should include education in the standards of care and appropriate protocols for patient charting. The course work requirements shall be determined as directed by the Board or its designee, and shall be completed no later than eighteen (18) months following the effective date of this Decision, unless the Board or its designee extends the time for good cause shown. Failure to complete the course work constitute cause for violation of this probation and/or immediate suspension of the license, in the discretion of the Board.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$5,000. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the

probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) **LICENSE SURRENDER** - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

One year for a license surrendered for a mental or physical illness.

(14) **PHYSICAL EXAMINATION** - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if

significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE – Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.



(17) **SUBMIT TO TESTS AND SAMPLES** - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

This Decision shall become effective on April 7, 2008.

IT IS SO ORDERED this 7<sup>th</sup> day of March 2008.

  
LAFRANCINE TATE  
BOARD OF REGISTERED NURSING  
STATE OF CALIFORNIA

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8  
9

10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **MICKI McCOLLISTER**  
1201 Martinique Circle  
15 Palm Springs, CA 92264

16 RN License No. 521992

17 Respondent.  
18

Accusation No. *2006-273*

OAH No.

**A C C U S A T I O N**

19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant), brings this Accusation  
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing.

23 2. On or about May 15, 1996, the Board of Registered Nursing issued RN  
24 License Number 521992 to Micki McCollister (Respondent). The license was in full force and  
25 effect at all times relevant to the charges brought herein and will expire on May 31, 2008, unless  
26 renewed.<sup>1/</sup>  
27

28 1. Respondent is also licensed as an RN in the state of Iowa, RN License No.095107.

1                                    **STATUTORY AND REGULATORY PROVISIONS**

2                    3.        This Accusation is brought before the Board of Registered Nursing under  
3 the authority of the following laws. All section references are to the Business and Professions  
4 Code (Code) unless otherwise indicated.

5                    4.        Section 2750 of the Code provides, in pertinent part, that the Board may  
6 discipline any licensee, including a licensee holding a temporary or an inactive license, for any  
7 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

8                    5.        Section 2764 of the Code provides, in pertinent part, that the expiration of  
9 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
10 against the licensee or to render a decision imposing discipline on the license. Under section  
11 2811(b) of the Code, the Board may renew an expired license at any time within eight years after  
12 the expiration.

13                   6.        Section 490 of the Business and Professions Code states, in pertinent part,  
14 that the Board may suspend or revoke a license when it finds that the licensee has been convicted  
15 of a crime, if the crime is substantially related to the qualifications, functions, or duties of the  
16 business or profession for which the license was issued.

17                   7.        Section 2761 of the Code states:

18                   "The board may take disciplinary action against a certified or licensed nurse or  
19 deny an application for a certificate or license for any of the following:

20                   "(a) Unprofessional conduct . . . .

21                   " . . . .

22                   "(f) Conviction of a felony or of any offense substantially related to the  
23 qualifications, functions, and duties of a registered nurse, in which event the record of the  
24 conviction shall be conclusive evidence thereof."

25                   8.        Section 2762 of the Code states:

26                   "In addition to other acts constituting unprofessional conduct within the meaning  
27 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed  
28 under this chapter to do any of the following:

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"....

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

9. Title 16 of the California Code of Regulations, section 1444, states, in pertinent part, that a conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

10. **Drugs:**

a. "Lorazepam," a benzodiazepine also known by the brand name Ativan, is a schedule IV controlled substance under Health and Safety Code section 11057(d)(16), and a dangerous drug under Business and Professions Code section 4022(c).

b. "Zolpidem," a sedative/hypnotic also known by the brand name Ambien, is a schedule IV controlled substance under Health and Safety Code section 11057(d)(32), and a dangerous drug under Business and Professions Code section 4022(c).

c. "Losartan" and "Hydrochlorothiazide," also known by the brand name Hyzaar, is used to reduce hypertension and is a dangerous drug under Business and Professions Code section 4022(c).

1 d. "Gatoflaxin," also known by the brand name Tequin, is an antibiotic and a  
2 dangerous drug under Business and Professions Code section 4022(c).

3 **COST RECOVERY**

4 12. Section 125.3 of the Code provides, in pertinent part, that the Board may  
5 request the administrative law judge to direct a licentiate found to have committed a violation or  
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
7 and enforcement of the case.

8 **March 9, 2005 Criminal Conviction for Driving With .08% or More BAL**

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Conviction of Substantially Related Criminal Offense)

11 13. Respondent is subject to disciplinary action under section 490 and 2761(f)  
12 in that Respondent has been convicted of a crime which is substantially related to the  
13 qualifications, functions and duties of a registered nurse. The circumstances are as follows:

14 14. On or about March 9, 2005, in Riverside County Superior Court, Case No.  
15 INM150865, entitled *People v. Micki McCollister*, Respondent was convicted by the court on her  
16 plea of guilty to driving a vehicle while having 0.08 percent or more, by weight, of alcohol in her  
17 blood, in violation of Vehicle Code section 23152(b) (driving a vehicle with a blood alcohol  
18 level of 0.08 percent or more), a misdemeanor.

19 15. On the basis of Respondent's plea described in paragraph 14, Respondent  
20 was placed on summary probation for 36 months on terms and conditions which included one  
21 day in custody, with credit for one day served, payment of approximately \$1,500.00 in fines and  
22 penalty assessments, completion of the First Offender DUI Program, restriction of her driver's  
23 license for three months, and an order that Respondent not drive with any measurable amount of  
24 alcohol or drugs in her blood or within six hours of consuming alcohol.

25 16. The circumstances of the crime are that on or about September 11, 2004,  
26 Respondent was observed driving a vehicle slowly and drifting across lanes, causing other cars to  
27 slow down and divert into other lanes. Upon being pulled over by law enforcement, she admitted  
28 to taking a sleep aid, Ativan (Lorazepam) and a blood pressure medication, Hyzaar (Losartan and

1 Hydrochlorothiazide), that day, and to consuming wine before driving. She did not perform well  
2 on field sobriety tests. She admitted that she was "out of it" and that she should not have been  
3 driving. Respondent was arrested and charged with violating Vehicle Code section 23152(a)  
4 (driving under the influence of alcohol/drugs) and Vehicle Code section 23152(b) (driving a  
5 vehicle with a blood alcohol level of 0.08 percent and more).

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct)

8 17. Respondent is subject to disciplinary action under section 2761(a) and  
9 2762(b) on the grounds of unprofessional conduct in that she used a controlled substance, or any  
10 dangerous drug or dangerous device, or alcoholic beverages, to an extent or in a manner  
11 dangerous or injurious to herself, any other person, or the public, based upon the facts and  
12 circumstances set forth in the First Cause for Discipline.

13 **THIRD CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 18. Respondent is subject to disciplinary action under section 2761(a) and  
16 2762(c) on the grounds of unprofessional conduct in that she was convicted of a criminal offense  
17 involving the consumption or self-administration of alcoholic beverages, based upon the facts  
18 and circumstances set forth in the First Cause for Discipline.

19 **March 9, 2004 Arrest for Driving Under the Influence of Alcohol and/or Drugs**

20 **FOURTH CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct)

22 19. Respondent is subject to disciplinary action under section 2761(a) and  
23 2762(b) on the grounds of unprofessional conduct in that she used a controlled substance, or any  
24 dangerous drug or dangerous device, or alcoholic beverages, to an extent or in a manner  
25 dangerous or injurious to herself, any other person, or the public. The circumstances are as  
26 follows:

27 *///*

28 *///*

1                   20.     On or about March 9, 2004, Respondent was involved in a motor vehicle  
2 collision. The collision occurred when Respondent reached down to pick up a telephone while  
3 driving and her vehicle drifted to the right and hit a parked vehicle. Her vehicle overturned and  
4 she was injured. She admitted to law enforcement at the scene that she drank wine and took  
5 Ambien (Zolpidem) a short time before driving, and that she should not have been driving.<sup>2/</sup> Her  
6 speech was slow and slurred, her eyes were red and watery, and she smelled of an alcoholic  
7 beverage. She was arrested for driving under the influence of alcohol and/or drugs in violation of  
8 Vehicle Code section 23152(a), and for making an unsafe lane change in violation of Vehicle  
9 Code section 22107. On or about April 9, 2004, in Riverside County Superior Court, Case No.  
10 INM145459, entitled *People v. Micki McCollister*, Respondent was charged with violating  
11 Vehicle Code section 23152(a) and (b). The charges were dismissed in the interest of justice and  
12 on March 9, 2005, Respondent pled guilty to exceeding the posted speed limit (Veh. Code §  
13 22350) and straddling a divided lane (Veh. Code § 21658(a)), both infractions.

14                                   **PRAYER**

15                   WHEREFORE, Complainant requests that a hearing be held on the matters herein  
16 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 17                   1.     Revoking or suspending RN License Number 521992, issued to Micki  
18 McCollister;
- 19                   2.     Ordering Micki McCollister to pay the Board the reasonable costs of the  
20 investigation and enforcement of this case, pursuant to Business and Professions Code section  
21 125.3; and,

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27                   2. She also told law enforcement that she had taken Gatifloxacin that day, which is an  
28 antibiotic.

1                    3.        Taking such other and further action as deemed necessary and proper.  
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3        DATED: 6/20/06  
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5  
6                      
7                    RUTH ANN TERRY, M.P.H., R.N.  
8                    Executive Officer  
9                    Board of Registered Nursing  
10                    State of California  
11                    Complainant

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